

and the FBI to complete or correct the information contained in the record before any final access decision is made, subject to the following conditions:

(i) Within 30 days after being advised that the FBI criminal history record discloses disqualifying information, the individual must notify the airport operator, in writing, of his or her intent to correct any information believed to be inaccurate. If no notification is received within 30 days, the airport operator may make a final access decision.

(ii) Upon notification by the individual that a record has been corrected, the airport operator must obtain a copy of the revised FBI record prior to making a final access decision.

(3) Notify an individual that a final decision has been made to grant or deny authorization for unescorted access.

(l) Any individual authorized to have unescorted access privilege to the areas identified in paragraph (a) of this section who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section must report the conviction and surrender the SIDA identification medium within 24 hours to the issuer.

(m) Criminal history record information provided by the FBI must be used solely for the purposes of this section, and no person shall disseminate the results of a criminal history records check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) The airport operator; or

(3) Others designated by the Administrator.

(n) The airport must maintain a written record for each individual until 180 days after the termination of the individual's authority for unescorted access. The records for each individual subject to:

(1) The access investigation must include: the application, the employment verification information obtained by the employer, the names of those from whom the employment verification information was obtained, the date the contact was made, or certification of same from air carriers or airport tenants, and any other information as re-

quired by the Assistant Administrator for Civil Aviation Security, and

(2) A criminal history records check must include the results of the records check, or a certification by the airport operator or air carrier that the check was completed and did not uncover a disqualifying conviction. These records must be maintained in a manner that protects the confidentiality of the employee, which is acceptable to the Assistant Administrator for Civil Aviation Security.

[Doc. No. 26763, 60 FR 51868, Oct. 3, 1995]

PART 108—AIRPLANE OPERATOR SECURITY

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§ 108.1 Applicability.

(a) This part prescribes aviation security rules governing—

(1) The operations of holders of FAA air carrier operating certificates or operating certificates engaging in scheduled passenger operations or public charter passenger operations;

(2) Each person aboard an airplane operated by a certificate holder described in paragraph (a)(1) of this section;

(3) Each person on an airport at which the operations described in paragraph (a)(1) of this section are conducted;

(4) Each certificate holder who receives a Security Directive or Information Circular and each person who receives information from a Security Directive or an Information Circular issued by the Director of Civil Aviation Security; and

(5) Each person who files an application or makes entries into any record or report that is kept, made or used to show compliance under this part, or to exercise any privileges under this part.

(b) This part does not apply to helicopter or to all-cargo operations.

[Doc. No. 24883, 51 FR 1352, Jan. 10, 1986, as amended by Amdt. 108-6, 54 FR 28984, July 10, 1989; Amdt. 108-14, 61 FR 64244, Dec. 3, 1996]

§ 108.3 Definitions.

The following are definitions of terms used in this part:

(a) *Certificate holder* means a person holding an FAA operating certificate when that person engages in scheduled passenger or public charter passenger operations or both.

(b) *Passenger seating configuration* means the total number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight and includes that seat in certain airplanes which may be used by a representative of the Administrator to conduct flight checks but is available for revenue purposes on other occasions.

(c) *Private charter* means any charter for which the charterer engages the total capacity of an airplane for the carriage of:

(1) Passengers in civil or military air movements conducted under contract with the Government of the United States or the Government of a foreign country; or

(2) Passengers invited by the charterer, the cost of which is borne entirely by the charterer and not directly or indirectly by the individual passengers.

(d) *Public charter* means any charter that is not a *private charter*.

(e) *Scheduled passenger operations* means holding out to the public of air transportation service for passengers from identified air terminals at a set time announced by timetable or schedule published in a newspaper, magazine, or other advertising medium.

(f) *Sterile area* means an area to which access is controlled by the inspection of persons and property in accordance with an approved security program or a security program used in accordance with § 129.25.

§ 108.4 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or to exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this part.

[Doc. No. 28745, 61 FR 64244, Dec. 3, 1996]

§ 108.5 Security program: Adoption and implementation.

(a) Each certificate holder shall adopt and carry out a security program that meets the requirements of § 108.7 for each of the following scheduled or public charter passenger operations:

(1) Each operation with an airplane having a passenger seating configuration of more than 60 seats.

(2) Each operation that provides deplaned passengers access, that is not otherwise controlled by a certificate holder using an approved security program or a foreign air carrier using a security program required by § 129.25, to a sterile area.

(3) Each operation with an airplane having a passenger seating configuration of more than 30 but less than 61 seats; except that those parts of the program effecting compliance with the requirements listed in § 108.7(b) (1), (2), and

(4) Need only be implemented when the Director of Civil Aviation Security or a designate of the Director notifies the certificate holder in writing that a security threat exists with respect to the operation.

(b) Each certificate holder that has obtained FAA approval for a security program for operations not listed in paragraph (a) of this section shall carry out the provisions of that program.

§ 108.7 Security program: Form, content, and availability.

(a) Each security program required by § 108.5 shall—

(1) Provide for the safety of persons and property traveling in air transportation and intrastate air transportation against acts of criminal violence and air piracy;

(2) Be in writing and signed by the certificate holder or any person delegated authority in this matter;

(3) Include the items listed in paragraph (b) of this section, as required by § 108.5; and

(4) Be approved by the Administrator.

(b) Each security program required by § 108.5 must include the following, as required by that section:

(1) The procedures and a description of the facilities and equipment used to perform the screening functions specified in § 108.9.

(2) The procedures and a description of the facilities and equipment used to perform the airplane and facilities control functions specified in § 108.13.

(3) The procedures used to comply with the applicable requirements of § 108.15 regarding law enforcement officers.

(4) The procedures used to comply with the requirements of § 108.17 regarding the use of X-ray systems.

(5) The procedures used to comply with the requirements of § 108.19 regarding bomb and air piracy threats.

(6) The procedures used to comply with the applicable requirements of § 108.10.

(7) The curriculum used to accomplish the training required by § 108.23.

(8) The procedures and a description of the facilities and equipment used to comply with the requirements of § 108.20 regarding explosives detection systems.

(c) Each certificate holder having an approved security program shall—

(1) Maintain at least one complete copy of the approved security program at its principal business office;

(2) Maintain a complete copy or the pertinent portions of its approved security program or appropriate implementing instructions at each airport where security screening is being conducted;

(3) Make these documents available for inspection upon request of any Civil Aviation Security Inspector;

(4) Restrict the distribution, disclosure, and availability of sensitive security information, as defined in part 191 of this chapter, to persons with a need-to-know; and

(5) Refer requests for sensitive security information by other persons to the Assistant Administrator for Civil Aviation Security.

[Doc. No. 108, 46 FR 3786, Jan. 15, 1981, as amended by Amdt. 108-3, 50 FR 28893, July 16, 1985; Amdt. 108-7, 54 FR 36946, Sept. 5, 1989; Amdt. 108-15, 62 FR 13744, Mar. 21, 1997]

§ 108.9 Screening of passengers and property.

(a) Each certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its approved security program to prevent or deter the carriage aboard airplanes of any explosive, incendiary, or a deadly or dangerous weapon on or about each individual's person or accessible property, and the carriage of any explosive or incendiary in checked baggage.

(b) Each certificate holder required to conduct screening under a security program shall refuse to transport—

(1) Any person who does not consent to a search of his or her person in accordance with the screening system

prescribed in paragraph (a) of this section; and

(2) Any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by paragraph (a) of this section.

(c) Except as provided by its approved security program, each certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its approved security program for detecting explosives, incendiaries, and deadly or dangerous weapons to inspect each person entering a sterile area at each preboarding screening checkpoint in the United States for which it is responsible, and to inspect all accessible property under that person's control.

(d) Each certificate holder shall staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

[Doc. No. 108, 46 FR 3786, Jan. 15, 1981, as amended by Amdt. 108-4, 51 FR 1352, Jan. 10, 1986; Amdt. 108-5, 52 FR 48509, Dec. 22, 1987; Amdt. 108-10, 56 FR 41425, Aug. 20, 1991]

§ 108.10 Prevention and management of hijackings and sabotage attempts.

(a) Each certificate holder shall—

(1) Provide and use a Security Coordinator on the ground and in flight for each international and domestic flight, as required by its approved security program; and

(2) Designate the pilot in command as the inflight Security Coordinator for each flight, as required by its approved security program.

(b) *Ground Security Coordinator.* Each ground Security Coordinator shall carry out the ground Security Coordinator duties specified in the certificate holder's approved security program.

(c) *Inflight Security Coordinator.* The pilot in command of each flight shall carry out the inflight Security Coordinator duties specified in the certificate holder's approved security program.

[Doc. No. 24719, 50 FR 28893, July 16, 1985]

§ 108.11 Carriage of weapons.

(a) No certificate holder required to conduct screening under a security pro-

gram may permit any person to have, nor may any person have, on or about his or her person or property, a deadly or dangerous weapon, either concealed or unconcealed, accessible to him or her while aboard an airplane for which screening is required unless:

(1) The person having the weapon is—

(i) An official or employee of the United States, or a State or political subdivision of a State, or of a municipality who is authorized by his or her agency to have the weapon; or

(ii) Authorized to have the weapon by the certificate holder and the Administrator and has successfully completed a course of training in the use of firearms acceptable to the Administrator.

(2) The person having the weapon needs to have the weapon accessible in connection with the performance of his or her duty from the time he or she would otherwise check it in accordance with paragraph (d) of this section until the time it would be returned after deplaning.

(3) The certificate holder is notified—

(i) Of the flight on which the armed person intends to have the weapon accessible to him or her at least 1 hour, or in an emergency as soon as practicable, before departure; and

(ii) When the armed person is other than an employee or official of the United States, that there is a need for the weapon to be accessible to the armed person in connection with the performance of that person's duty from the time he or she would otherwise check it in accordance with paragraph (d) of this section until the time it would be returned to him or her after deplaning.

(4) The armed person identifies himself or herself to the certificate holder by presenting credentials that include his or her clear, full-face picture, his or her signature, and the signature of the authorizing official of his or her service or the official seal of his or her service. A badge, shield, or similar may not be used as the sole means of identification.

(5) The certificate holder—

(i) Ensures that the armed person is familiar with its procedures for carrying a deadly or dangerous weapon aboard its airplane before the time the person boards the airplane;

(ii) Ensures that the identity of the armed person is known to each law enforcement officer and each employee of the certificate holder responsible for security during the boarding of the airplane; and

(iii) Notifies the pilot in command, other appropriate crewmembers, and any other person authorized to have a weapon accessible to him or her aboard the airplane of the location of each authorized armed person aboard the airplane.

(b) No person may, while on board an airplane operated by a certificate holder for which screening is not conducted, carry on or about that person a deadly or dangerous weapon, either concealed or unconcealed. This paragraph does not apply to—

(1) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; or

(2) Crewmembers and other persons authorized by the certificate holder to carry arms.

(c) No certificate holder may knowingly permit any person to transport, nor may any person transport or tender for transport, any explosive, incendiary or a loaded firearm in checked baggage aboard an airplane. For the purpose of this section, a loaded firearm means a firearm which has a live round of ammunition, cartridge, detonator, or powder in the chamber or in a clip, magazine, or cylinder inserted in it.

(d) No certificate holder may knowingly permit any person to transport, nor may any person transport or tender for transport, any unloaded firearm in checked baggage aboard an airplane unless—

(1) The passenger declares to the certificate holder, either orally or in writing before checking the baggage, that any firearm carried in the baggage is unloaded;

(2) The firearm is carried in a container the certificate holder considers appropriate for air transportation;

(3) When the firearm is other than a shotgun, rifle, or other firearm normally fired from the shoulder position, the baggage in which it is carried is locked, and only the passenger checking the baggage retains the key or combination; and

(4) The baggage containing the firearm is carried in an area, other than the flightcrew compartment, that is inaccessible to passengers.

(e) No certificate holder may serve any alcoholic beverage to a person having a deadly or dangerous weapon accessible to him or her nor may such person drink any alcoholic beverage while aboard an airplane operated by the certificate holder.

(f) Paragraphs (a), (b), and (d) of this section do not apply to the carriage of firearms aboard air carrier flights conducted for the military forces of the Government of the United States when the total cabin load of the airplane is under exclusive use by those military forces if the following conditions are met:

(1) No firearm is loaded and all bolts to such firearms are locked in the open position; and

(2) The certificate holder is notified by the unit commander or officer in charge of the flight before boarding that weapons will be carried aboard the aircraft.

[Doc. No. 108, 46 FR 3786, Jan. 15, 1981, as amended by Amdt. 108–4, 51 FR 1352, Jan. 10, 1986]

§ 108.13 Security of airplanes and facilities.

Each certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its approved security program to perform the following control functions with respect to each airplane operation for which screening is required:

(a) Prohibit unauthorized access to the airplane.

(b) Ensure that baggage carried in the airplane is checked in by a responsible agent and that identification is obtained from persons, other than known shippers, shipping goods or cargo aboard the airplane.

(c) Ensure that cargo and checked baggage carried aboard the airplane is handled in a manner that prohibits unauthorized access.

(d) Conduct a security inspection of the airplane before placing it in service and after it has been left unattended.

§ 108.14 Transportation of Federal Air Marshals.

(a) Each certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled and public charter passenger operation designated by the Administrator.

(b) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on official duty, including repositioning flights.

(c) Each certificate holder shall assign the specific seat requested by a Federal Air Marshal who is on official duty.

[Doc. No. 24714, 50 FR 27925, July 8, 1985]

§ 108.15 Law enforcement officers.

(a) At airports within the United States not governed by part 107 of this chapter, each certificate holder engaging in scheduled passenger or public charter passenger operations shall—

(1) If security screening is required for a public charter operation by § 108.5(a), or for a scheduled passenger operation by § 108.5(b) provide for law enforcement officers meeting the qualifications and standards, and in the number and manner specified, in part 107; and

(2) When using airplanes with a passenger seating configuration of 31 through 60 seats in a public charter operation for which screening is not required, arrange for law enforcement officers meeting the qualifications and standards specified in part 107 to be available to respond to an incident, and provide to its employees, including crewmembers, as appropriate, current information with respect to procedures for obtaining law enforcement assistance at that airport.

(b) At airports governed by part 107 of this chapter, each certificate holder engaging in scheduled or public charter passenger operations, when using airplanes with a passenger seating configuration of 31 through 60 seats for which screening is not required, shall arrange for law enforcement officers meeting the qualifications and standards specified in part 107 to be available to respond to an incident and provide its employees, including crewmembers, as appropriate, current infor-

mation with respect to procedures for obtaining this law enforcement assistance at that airport.

§ 108.17 Use of X-ray systems.

(a) No certificate holder may use an X-ray system within the United States to inspect carry-on or checked articles unless specifically authorized under a security program required by § 108.5 of this part or use such a system contrary to its approved security program. The Administrator authorizes certificate holders to use X-ray systems for inspecting carry-on or checked articles under an approved security program if the certificate holder shows that—

(1) For a system manufactured before April 25, 1974, it meets either the guidelines issued by the Food and Drug Administration (FDA), Department of Health, Education, and Welfare (HEW) and published in the FEDERAL REGISTER (38 FR 21442, August 8, 1973); or the performance standards for cabinet X-ray systems designed primarily for the inspection of carry-on baggage issued by the FDA and published in 21 CFR 1020.40 (39 FR 12985, April 10, 1974);

(2) For a system manufactured after April 24, 1974, it meets the standards for cabinet X-ray systems designed primarily for the inspection of carry-on baggage issued by the FDA and published in 21 CFR 1020.40 (39 FR 12985, April 10, 1974);

(3) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of weapons and other dangerous articles;

(4) Procedures are established to ensure that each operator of the system is provided with an individual personnel dosimeter (such as a film badge or thermoluminescent dosimeter). Each dosimeter used shall be evaluated at the end of each calendar month, and records of operator duty time and the results of dosimeter evaluations shall be maintained by the certificate holder; and

(5) The system meets the imaging requirements set forth in an approved Air Carrier Security Program using the

step wedge specified in American Society for Testing and Materials Standard F792–82.

(b) No certificate holder may use an X-ray system within the United States unless within the preceding 12 calendar months a radiation survey has been conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40 or guidelines published by the FDA in the FEDERAL REGISTER of August 8, 1973 (38 FR 21442).

(c) No certificate holder may use an X-ray system after the system is initially installed or after it has been moved from one location to another, unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40 or guidelines published by the FDA in the FEDERAL REGISTER of August 8, 1973 (38 FR 21442) except that a radiation survey is not required for an X-ray system that is moved to another location if the certificate holder shows that the system is so designed that it can be moved without altering its performance.

(d) No certificate holder may use an X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless that Administration has advised the FAA that the defect or failure to comply does not create a significant risk or injury, including genetic injury, to any person.

(e) No certificate holder may use an X-ray system to inspect carry-on or checked articles unless a sign is posted in a conspicuous place at the screening station and on the X-ray system which notifies passengers that such items are being inspected by an X-ray and advises them to remove all X-ray, scientific, and high-speed film from carry-on and checked articles before inspection. This sign shall also advise passengers that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any carry-on or checked articles to more than 1 milliroentgen during the inspection, the certificate holder shall post a sign which advises passengers to remove film of all kinds from their articles be-

fore inspection. If requested by passengers, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

(f) Each certificate holder shall maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and shall make it available for inspection upon request by the Administrator at each of the following locations:

(1) The certificate holder's principal business office; and

(2) The place where the X-ray system is in operation.

(g) The American Society for Testing and Materials Standard F792–82, "Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," described in this section is incorporated by reference herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by these amendments may obtain copies of the standard from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. In addition, a copy of the standard may be examined at the FAA Rules Docket, Docket No. 24115, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

(h) Each certificate holder shall comply with X-ray operator duty time limitations specified in its security program.

[Doc. No. 108, 46 FR 3786, Jan. 15, 1981, as amended by Amdt. 108–1, 50 FR 25656, June 20, 1985; Amdt. 108–10, 56 FR 41425, Aug. 20, 1991; Amdt. 108–11, 56 FR 48373, Sept. 24, 1991]

§ 108.18 Security Directives and Information Circulars.

(a) Each certificate holder required to have an approved security program for passenger operations shall comply with each Security Directive issued to the certificate holder by the Director of Civil Aviation Security, or by any person to whom the Director has delegated the authority to issue Security Directives, within the time prescribed in the Security Directive for compliance.

(b) Each certificate holder who receives a Security Directive shall—

(1) Not later than 24 hours after delivery by the FAA or within the time prescribed in the Security Directive, acknowledge receipt of the Security Directive;

(2) Not later than 72 hours after delivery by the FAA or within the time prescribed in the Security Directive, specify the method by which the certificate holder has implemented the measures in the Security Directive; and

(3) Ensure that information regarding the Security Directive and measures implemented in response to the Security Directive are distributed to specified personnel as prescribed in the Security Directive and to other personnel with an operational need to know.

(c) In the event that the certificate holder is unable to implement the measures contained in the Security Directive, the certificate holder shall submit proposed alternative measures, and the basis for submitting the alternative measures, to the Director of Civil Aviation Security for approval. The certificate holder shall submit proposed alternative measures within the time prescribed in the Security Directive. The certificate holder shall implement any alternative measures approved by the Director of Civil Aviation Security.

(d) Each certificate holder who receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular shall—

(1) Restrict the availability of the Security Directive or Information Circular and information contained in the Security Directive or the Information Circular to those persons with an operational need to know; and

(2) Refuse to release the Security Directive or Information Circular and information regarding the Security Directive or Information Circular to persons other than those with an operational need to know without the prior written consent of the Director of Civil Aviation Security.

(Approved by the Office of Management and Budget under control number 2120-0098)

[Doc. No. 25953, 54 FR 28984, July 10, 1989]

§ 108.19 Security threats and procedures.

(a) Upon receipt of a specific and credible threat to the security of a flight, the certificate holder shall—

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any countermeasures to be applied; and

(2) Ensure that the in-flight security coordinator notifies the flight and cabin crewmembers of the threat, any evaluation thereof, and any countermeasures to be applied.

(b) Upon receipt of a bomb threat against a specific airplane, each certificate holder shall attempt to determine whether or not any explosive or incendiary is aboard the airplane involved by doing the following:

(1) Conducting a security inspection on the ground before the next flight or, if the airplane is in flight, immediately after its next landing.

(2) If the airplane is being operated on the ground, advising the pilot in command to immediately submit the airplane for a security inspection.

(3) If the airplane is in flight, immediately advising the pilot in command of all pertinent information available so that necessary emergency action can be taken.

(c) Immediately upon receiving information that an act or suspected act of air piracy has been committed, the certificate holder shall notify the Administrator. If the airplane is in airspace under other than United States jurisdiction, the certificate holder shall also notify the appropriate authorities of the State in whose territory the airplane is located and, if the airplane is in flight, the appropriate authorities of the State in whose territory the airplane is to land. Notification of the appropriate air traffic controlling authority is sufficient action to meet this requirement.

[Doc. No. 108, 46 FR 3786, Jan. 15, 1981, as amended by Amdt. 108-4, 51 FR 1352, Jan. 10, 1986; Amdt. 108-9, 56 FR 27869, June 17, 1991]

§ 108.20 Use of explosives detection systems.

When the Administrator shall require by amendment under § 108.25, each certificate holder required to conduct screening under a security program

shall use an explosive detection system that has been approved by the Administrator to screen checked baggage on international flights in accordance with the certificate holder's security program.

[Doc. No. 25956, 54 FR 36946, Sept. 5, 1989]

§ 108.21 Carriage of passengers under the control of armed law enforcement escorts.

(a) Except as provided in paragraph (e) of this section, no certificate holder required to conduct screening under a security program may carry a passenger in the custody of an armed law enforcement escort aboard an airplane for which screening is required unless—

(1) The armed law enforcement escort is an official or employee of the United States, of a State or political subdivision of a State, or a municipality who is required by appropriate authority to maintain custody and control over an individual aboard an airplane;

(2) The certificate holder is notified by the responsible government entity at least 1 hour, or in case of emergency as soon as possible, before departure—

(i) Of the identity of the passenger to be carried and the flight on which it is proposed to carry the passenger; and

(ii) Whether or not the passenger is considered to be in a maximum risk category;

(3) If the passenger is considered to be in a maximum risk category, that the passenger is under the control of at least two armed law enforcement escorts and no other passengers are under the control of those two law enforcement escorts;

(4) No more than one passenger who the certificate holder has been notified is in a maximum risk category is carried on the airplane;

(5) If the passenger is not considered to be in a maximum risk category, the passenger is under the control of at least one armed law enforcement escort, and no more than two of these persons are carried under the control of any one law enforcement escort;

(6) The certificate holder is assured, prior to departure, by each law enforcement escort that—

(i) The officer is equipped with adequate restraining devices to be used in the event restraint of any passenger

under the control of the escort becomes necessary; and

(ii) Each passenger under the control of the escort has been searched and does not have on or about his or her person or property anything that can be used as a deadly or dangerous weapon;

(7) Each passenger under the control of a law enforcement escort is—

(i) Boarded before any other passengers when boarding at the airport where the flight originates and deplaned at the destination after all other deplaning passengers have deplaned;

(ii) Seated in the rear-most passenger seat when boarding at the airport where the flight originates; and

(iii) Seated in a seat that is neither located in any lounge area nor located next to or directly across from any exit; and

(8) A law enforcement escort having control of a passenger is seated between the passenger and any aisle.

(b) No certificate holder operating an airplane under paragraph (a) of this section may—

(1) Serve food, beverage, or provide metal eating utensils to a passenger under the control of a law enforcement escort while aboard the airplane unless authorized to do so by the law enforcement escort.

(2) Serve a law enforcement escort or the passenger under the control of the escort any alcoholic beverages while aboard the airplane.

(c) Each law enforcement escort carried under the provisions of paragraph (a) of this section shall, at all times, accompany the passenger under the control of the escort and keep the passenger under surveillance while aboard the airplane.

(d) No law enforcement escort carried under paragraph (b) of this section or any passenger under the control of the escort may drink alcoholic beverages while aboard the airplane.

(e) This section does not apply to the carriage of passengers under voluntary protective escort.

§ 108.23 Training.

(a) No certificate holder may use any person as a Security Coordinator unless, within the preceding 12 calendar

months, that person has satisfactorily completed the security training as specified in the certificate holder's approved security program.

(b) No certificate holder may use any person as a crewmember on any domestic or international flight unless within the preceding 12 calendar months or within the time period specified in an Advanced Qualification Program approved under SFAR 58 that person has satisfactorily completed the security training required by § 121.417(b)(3)(v) or § 135.331(b)(3)(v) of this chapter and as specified in the certificate holder's approved security program. With respect to training conducted under § 121.417 or § 135.331, whenever a crewmember who is required to take recurrent training completes the training in the calendar month before or the calendar month after the calendar month in which that training is required, he is considered to have completed the training in the calendar month in which it was required.

[Doc. No. 24719, 50 FR 28893, July 16, 1985, as amended by Amdt. 108-8, 55 FR 40275, Oct. 2, 1990]

§ 108.25 Approval of security programs and amendments.

(a) Unless otherwise authorized by the Administrator, each certificate holder required to have a security program for a passenger operation shall submit its proposed security program to the Administrator for approval at least 90 days before the date of the intended passenger operations. Within 30 days after receiving the program, the Administrator either approves the program or notifies the certificate holder to modify the program to comply with the applicable requirements of this part. The certificate holder may petition the Administrator to reconsider the notice to modify within 30 days after receiving the notice, and, except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

(b) The Administrator may amend an approved security program if it is determined that safety and the public interest require the amendment, as follows:

(1) The Administrator notifies the certificate holder, in writing, of the proposed amendment, fixing a period of not less than 30 days within which it may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Administrator notifies the certificate holder of any amendment adopted or rescinds the notice. The amendment becomes effective not less than 30 days after the certificate holder receives the notice, unless the certificate holder petitions the Administrator to reconsider the amendment, in which case the effective date is stayed by the Administrator.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes the procedure in this paragraph impracticable or contrary to the public interest, the Administrator may issue an amendment, effective without stay, on the date the certificate holder receives notice of it. In such a case, the Administrator incorporates the findings, and a brief statement of the reasons for it, in the notice of the amendment to be adopted.

(c) A certificate holder may submit a request to the Administrator to amend its program. The application must be filed with the Administrator at least 30 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Administrator. Within 15 days after receiving a proposed amendment, the Administrator either approves or denies the request. Within 30 days after receiving from the Administrator a notice of refusal to approve the application for amendment, the applicant may petition the Administrator to reconsider the refusal to amend.

§ 108.27 Evidence of compliance.

On request of the Administrator, each certificate holder shall provide evidence of compliance with this part and its approved security program.

[Doc. No. 24719, 50 FR 28894, July 16, 1985; 50 FR 35535, Aug. 30, 1985; 51 FR 44875, Dec. 12, 1986]

§ 108.29 Standards for security oversight.

(a) Each certificate holder shall ensure that:

(1) Each person performing a security-related function for the certificate holder has knowledge of the provisions of this part 108, applicable Security Directives and Information Circulars promulgated pursuant to § 108.18, and the certificate holder's security program to the extent that the performance of the function imposes a need to know.

(2) Daily, a Ground Security Coordinator at each airport:

(i) Reviews all security-related functions for effectiveness and compliance with this part, the certificate holder's security program, and applicable Security Directives; and

(ii) Immediately initiates corrective action for each instance of noncompliance with this part, the certificate holder's security program, and applicable Security Directives.

(b) The requirements prescribed in paragraph (a) of this section apply to all security-related functions performed for the certificate holder whether by a direct employee or a contractor employee.

[Doc. No. 26522, 56 FR 41425, Aug. 20, 1991]

§ 108.31 Employment standards for screening personnel.

(a) No certificate holder shall use any person to perform any screening function, unless that person has:

(1) A high school diploma, a General Equivalency Diploma, or a combination of education and experience which the certificate holder has determined to have equipped the person to perform the duties of the position;

(2) Basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(i) Screeners operating X-ray equipment must be able to distinguish on the X-ray monitor the appropriate imaging standard specified in the certificate holder's security program. Whenever the X-ray system displays colors, the operator must be able to perceive each color;

(ii) Screeners operating any screening equipment must be able to distin-

guish each color displayed on every type of screening equipment and explain what each color signifies;

(iii) Screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment;

(iv) Screeners performing physical searches or other related operations must be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing; and

(v) Screeners who perform pat-downs or hand-held metal detector searches of persons must have sufficient dexterity and capability to conduct those procedures on all parts of the persons' bodies.

(3) The ability to read, speak, and write English well enough to:

(i) Carry out written and oral instructions regarding the proper performance of screening duties;

(ii) Read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) Provide direction to and understand and answer questions from English-speaking persons undergoing screening; and

(iv) Write incident reports and statements and log entries into security records in the English language.

(4) Satisfactorily completed all initial, recurrent, and appropriate specialized training required by the certificate holder's security program.

(b) Notwithstanding the provisions of paragraph (a)(4) of this section, the certificate holder may use a person during the on-the-job portion of training to perform security functions provided that the person is closely supervised and does not make independent judgments as to whether persons or property may enter a sterile area or aircraft without further inspection.

(c) No certificate holder shall use a person to perform a screening function after that person has failed an operational test related to that function until that person has successfully completed the remedial training specified in the certificate holder's security program.

(d) Each certificate holder shall ensure that a Ground Security Coordinator conducts and documents an annual evaluation of each person assigned screening duties and may continue that person's employment in a screening capacity only upon the determination by that Ground Security Coordinator that the person:

(1) Has not suffered a significant diminution of any physical ability required to perform a screening function since the last evaluation of those abilities;

(2) Has a satisfactory record of performance and attention to duty; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(e) Paragraphs (a) through (d) of this section do not apply to those screening functions conducted outside the United States over which the certificate holder does not have operational control.

(f) At locations outside the United States where the certificate holder has operational control over a screening function, the certificate holder may use screeners who do not meet the requirements of paragraph (a)(3) of this section, provided that at least one representative of the certificate holder who has the ability to functionally read and speak English is present while the certificate holder's passengers are undergoing security processing.

[Doc. No. 26522, 56 FR 41425, Aug. 20, 1991]

§ 108.33 Access investigation.

(a) On or after January 31, 1996 for each employee or contractor employee covered under a certification made to an airport operator pursuant to § 107.31(f) of this chapter, the certificate holder must ensure that:

(1) The individual has satisfactorily undergone an employment history review covering the past 10 years and verification of the 5 years preceding the date the access investigation is initiated as provided in paragraph (b) of this section; and

(2) The results of the access investigation do not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of a crime involving any of the following

crimes enumerated in paragraphs (a)(2)(i) through (xxv) of this section. Where specific citations are listed, both the current citation and the citation that applied before the statutes are recodified in 1994 are listed.

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306 [formerly 49 U.S.C. App. 1472(b)];

(ii) Interference with air navigation, 49 U.S.C. 46308, [formerly 49 U.S.C. App. 1472(c)];

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312, [formerly 49 U.S.C. App. 1472(b)(2)];

(iv) Aircraft piracy, 49 U.S.C. 46502, [formerly 49 U.S.C. App. 1472(i)];

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504, [formerly 49 U.S.C. App. 1472(j)];

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506, [formerly 49 U.S.C. App. 1472(k)];

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505 [formerly 49 U.S.C. App. 1472(l)];

(viii) Conveying false information and threats, 49 U.S.C. 49 46507 [formerly 49 U.S.C. App. 1472(m)];

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b), [formerly 49 U.S.C. App. 1472(n)];

(x) Lighting violations in connection with transportation of controlled substances, 49 U.S.C. 46315, [formerly 49 U.S.C. App. 1472(q)];

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314, [formerly 49 U.S.C. App. 1472(r)];

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(b) The access investigation must include the following steps:

(1) The individual must complete an application form that includes:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 months, during the previous 10-year period;

(iii) Notification that the individual will be subject to an employment history verification and possibly a criminal history records check; and

(iv) Any convictions during the previous 10-year period for the crimes listed in paragraph (a)(2) of this section.

(2) The identity of the individual must be verified through the presentation of two forms of identification, one of which must bear the individual's photograph.

(3) The information on the most recent 5 years of employment history required under paragraph (b)(1)(ii) of this section must be verified in writing, by documentation, by telephone, or in person.

(4) If one or more of the following conditions exists, the access investigation must not be considered complete unless it includes a check of the individual's fingerprint-based criminal history record maintained by the Federal Bureau of Investigation (FBI). The airport operator may request a check of the individual's fingerprint-based criminal history record only if one or more of the following conditions exists:

(i) The individual cannot satisfactorily account for a period of unemployment of 12 months or more during the previous 10-year period;

(ii) The individual is unable to support statements made or there are significant inconsistencies between information provided on the application in response to questions required by paragraph (b)(1)(ii) of this section and that which is obtained through the 5-year verification process; or

(iii) Information becomes available to the certificate holder during the access investigation indicating a possible conviction for one of the disqualifying crimes.

(c) The certificate holder must designate an individual to be responsible for:

(1) Reviewing and controlling the results of the access investigation; and

(2) Serving as the contact to receive notification from an individual applying for unescorted access of his or her intent to seek correction of his or her criminal history record with the FBI.

(d) Prior to commencing the criminal history records check, the certificate holder must notify the affected individuals.

(e) The certificate holder must collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints must be recorded on fingerprint cards approved by the FBI;

(2) The fingerprints must be obtained from the individual under direct observation by the certificate holder;

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification media, one of which must bear his or her photograph; and

(4) The fingerprint card must be forwarded to Federal Aviation Administration, 800 Independence Ave, S.W., Washington, D.C. 20591 (ATTN: ACO-310, Access Processing) and

(5) Fees for the processing of the criminal checks are due upon application. Air carriers shall submit payment through corporate check, cashier's check or money order made payable to "U.S. FAA," at the rate of \$24.00 for each fingerprint card. Combined payment for multiple applications is acceptable.

(f) In conducting the criminal history records check required by this section, the certificate holder must investigate arrest information for the crimes listed in paragraph (a)(2) of this section for which no disposition has been recorded to make a determination of the outcome of the arrest.

(g) The certificate holder must:

(1) At the time the fingerprints are taken, notify the individual that a

copy of the criminal history record received from the FBI will be made available if requested in writing.

(2) Prior to making a final decision to deny authorization for unescorted access, advise the individual that the FBI criminal history record discloses information that would disqualify him or her from unescorted access authorization and provide each affected individual with a copy of his or her FBI record. The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in the record before any final access decision is made, subject to the following conditions:

(i) Within 30 days after being advised that the criminal history record received from the FBI discloses disqualifying information, the individual must notify the certificate holder, in writing, of his or her intent to correct any information believed to be inaccurate. If no notification is received within 30 days, the certificate holder may make a final access decision.

(ii) Upon notification by the individual that the record has been corrected, the certificate holder must obtain a copy of the revised record from the FBI prior to making a final access decision.

(3) Notify an individual that a final decision has been made to grant or deny authority for unescorted access.

(h) Any individual authorized to have unescorted access privilege to areas identified in §107.31(a) of this chapter, who is subsequently convicted of any of the crimes listed in paragraph (a)(2) of this section, must report the conviction and surrender the SIDA identification medium within 24 hours to the issuer.

(i) Criminal history record information provided by the FBI must be used solely for the purposes of this section, and no person shall disseminate the results of a criminal history records check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) The certificate holder; or

(3) Others designated by the Administrator.

(j) The certificate holder must maintain a written record that the inves-

tigation was conducted for the individual until 180 days after the termination of the individual's authority for unescorted access. The record for individuals subject to:

(1) The access investigation must include the application, the employment verification information obtained by the employer, the names of those from whom the employment verification information was obtained, the date the contact was made, and any other information as required by the Assistant Administrator for Civil Aviation Security, and

(2) A criminal history records check must include the results of the records check or certification by the air carrier that a check was completed and did not uncover a disqualifying conviction. These records must be maintained in a manner that protects the confidentiality of the employee, which is acceptable to the Assistant Administrator for Civil Aviation Security.

[Doc. No. 26763, 60 FR 51869, Oct. 3, 1995, as amended by Amdt. 108-12, 60 FR 55657, Nov. 2, 1995]

PART 109—INDIRECT AIR CARRIER SECURITY

Sec.

109.1 Applicability.

109.3 Security program.

109.5 Approval of security programs and amendments.

AUTHORITY: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701-44702, 44705, 44901-44905, 44907, 44913-44914, 44932, 44935-44936, 46105.

§ 109.1 Applicability.

(a) This part prescribes aviation security rules governing each air carrier, including each air freight forwarder and each cooperative shippers' association, engaged indirectly in air transportation of property;

(b) For the purposes of this part, *property* means any package cargo.

[Doc. No. 19840, 44 FR 72345, Dec. 13, 1979]

§ 109.3 Security program.

(a) Each indirect air carrier shall adopt and carry out a security program that—